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| 10/821,049 | 04/08/2004 | Dustin Kirkland | AUS920031008US1 | 9648 |
| 7590 | | 12/28/2007 | | |
| Darcell Walker Suite 250 9301 Southwest Freeway Houston, TX 77074 | | | EXAMINER ZUBAJLO, JENNIFER L | |
| | | | ART UNIT 2629 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | |
|------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/821,049 | Applicant(s) KIRKLAND ET AL. |
| | Examiner Jennifer Zubajlo | Art Unit 2629 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7, 9-13, 15 and 17-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 9-13, 15 and 17-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 5 is objected to because of the following informalities: Claim 5 is dependent on claim 4 which has been canceled. Appropriate correction is required. For examination purposes, Examiner assumes claim 5 to be dependent on claim 2.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 18 recites the limitation "the method" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-13, 15, 17, and 18 fails to fall within a statutory category of invention (Machine, Manufacture, and Composition of Matter). The claims are not directed to a process within the meaning of 101, since it's not a series of steps or acts being performed, but instead a program which executed cause a series of process steps or acts to occur.

On page 11, last paragraph of the specification, Applicant has provided antecedent basis for the claim terminology "computer readable medium..... includes: transmission type medium, such as digital and analog communications links". The medium in the context of this disclosure can cover signals and carrier waves which are not a manufacture within the meaning of 101. Therefore, it's statutory under 35 USC 101.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 7, 9-13, 17-21, and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beom-Seok Lee (Pub. No.: US 2003/0234799 A1) in view of Gregory T. Janky (Patent No: US 7,050,907 B1).

As to claims 1 and 11, Lee teaches, a method and system for adjusting a screen display based on a user's distance from the display device (see Abstract, figures 1 and 2, and [0015]) comprising: establishing a relationship between the distance of a user from a display screen and the size of the display on the screen (see Abstract, figures 1 and 2, and [0015]); detecting the movement of the user with respect to the display screen (see Abstract, figures 1 and 2, and [0015]); adjusting the size of the screen display based on the location of the user with respect to the display screen (see [0038] and [0042]); and displaying the display in the adjusted display size (see figures 5 and 6, [0038] and [0042]).

Lee does not teach Lee doesn't teach determining whether said detected user movement is a valid movement, wherein a valid movement occurs when the detected

user movement is outside a predetermined user area for a predetermined amount of time.

Janky teaches determining whether said detected user movement is a valid movement, wherein a valid movement occurs when the detected user movement is outside a predetermined user area for a predetermined amount of time (column 13 lines 16-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the validity of the movements detected by a motion detector taught by Janky into the method and system for adjusting a screen display based on a user's distance from the display device taught by Lee because it is useful if the display adjustments are only made when desired/predefined by a user

As to claim 19, Lee teaches, a system for adjusting a screen display based on a user's distance from the display device comprising a display device (see abstract, figures 1 and 2, and [0015]); a device for determining user movement (see abstract, figure 1 and 2); a distance approximation device for determining the location of a user from said display device (see abstract, figures 1 and 2, and [0015]); software for determining the whether the determined distance of a user from the display device is beyond an established threshold distance (see [0030] and [0044]); and software for adjusting the size of the display on the display device based on the determined distance of the user from the display device (see [0030] and [0044]).

Lee doesn't teach determining the validity of any determined movement, based on movement of a user outside a predetermined user area and the amount of time the user remains out of the predetermined user area.

Janky teaches determining the validity of any determined movement, based on movement of a user outside a predetermined user area and the amount of time the user remains out of the predetermined user area (see column 7 lines 8-12 and column 13 lines 16-24).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the validity of the movements detected by a motion detector taught by Janky into the system for adjusting a screen display based on a user's distance from the display device comprising a display device taught by Lee because it is useful if the display adjustments are only when desired/predefined by a user.

As to claims 2 and 12 (dependent on claim 1 and 11 respectively), the combination of Lee and Janky teach the limitations as described in the above rejection of claims 1 and 11.

Janky teaches establishing a threshold distance of the user from the display screen as an outer boundary of the predetermined user area (see column 2 lines 22-39, column 10 lines 5-12 and column 13 lines 16-24).

As to claims 3 and 13 (dependent on claim 2 and 12 respectively), the combination of Lee and Janky teach the limitations as described in the above rejection of claims 1, 2, 11, and 12.

Janky teaches determining whether detected movement of the user is beyond the established threshold distance before adjusting the size (see column 2 lines 22-39, column 10 lines 5-12 and column 13 lines 16-24 – note that adjusting the size is not directly taught by Janky but is an obvious example of the sort of command that could be generated when user/device is out of predefined area/zone).

As to claim 7 (dependent on claim 2), the combination of Lee and Janky teach the limitations as described in the above rejection of claims 1 and 2.

Janky teaches the threshold distance comprises multiple threshold ranges (see column 2 lines 22-39, column 7 lines 6-11, column 10 lines 5-12 and column 13 lines 16-24 – note that this area can be user defined and can cover any areas/ranges desired by the user).

As to claims 9 and 10 (dependent on claims 1 and 9 respectively), the combination of Lee and Janky teach the limitations as described in the above rejection of claim 1.

Janky teaches determining whether said detected user movement is a valid movement, determining the amount of time a user is out of the local area, and establishing a minimum time the user has to be out of the local area to trigger a

movement beyond the threshold distance (see column 7 lines 8-12 and column 13 lines 18-24).

As to claims 17 and 18 (dependent on claims 12 and 17 respectively), the combination of Lee and Janky teach the limitations as described in the above rejection of claims 11 and 12.

Janky teaches determining whether said detected user movement is a valid movement, determining the amount of time a user is out of the local area, and establishing a minimum time the user has to be out of the local area to trigger a movement beyond the threshold distance (see column 7 lines 8-12 and column 13 lines 18-24 – note that these limitations can be user defined).

As to claim 20 (dependent on claim 19), the combination of Lee and Janky teach the limitations as described in the above rejection of claim 19.

Lee teaches the distance approximation device as part of the display device (see figure 1, [0029] and [0041]).

As to claim 21 (dependent on claim 19), the combination of Lee and Janky teach the limitations as described in the above rejection of claim 19.

As interpreted broadly Lee teaches the distance approximation device positioned immediately adjacent the display device (figure 1, [0029], and [0041]). The location of

the sensor is not taught directly but is simply an engineering choice of design as long as it is somewhere close to display device.

As to claim 23 (dependent on claim 2), Janky teaches wherein the said valid movement determination step further comprises the steps of: determining whether user movement be the threshold distance; and determining the amount of time user is beyond the threshold distance (see column 7 lines 8-12 and column 13 lines 16-24).

As to claim 24 (dependent on claim 23), Janky teaches wherein said valid movement comprises user movement beyond the threshold distance for a predetermined amount of time (column 13 lines 16-24).

8. Claims 5, 15, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beom-Seok Lee (Pub. No.: US 2003/0234799 A1) in view of Gregory T. Janky (Patent No: US 7,050,907 B1), further in view of Michael Joseph Dunn (Patent No.: US 6,890,077 B2).

As to claims 5, 15, and 22, the combination of Lee and Janky teach the limitations as described in the above rejection of claims 1, 2, 11, 12, and 19.

The combination of Lee and Janky do not teach determining whether display has multiple sections and when display does have multiple sections or identifying a selected section by user for adjustment.

Dunn teaches determining whether a display has multiple sections and when display does have multiple sections, identifying a selected section by user for adjustment (see Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate determining whether display has multiple sections and when display does have multiple sections, identifying a selected section by user for adjustment taught by Dunn into the system and method for adjusting a screen display based on a user's distance and the validity of this distance/movement detected from the display device taught by the combination of Lee and Janky, because it would be more user friendly.

Response to Arguments

9. Applicant's arguments filed 12/4/07 have been fully considered but they are not persuasive.

Applicant has canceled claims 4, 6, and 14. Claims 8 and 18 were previously canceled.

Applicant argues that Janky discloses an automatic response when an electronic device is taken from an area and argues that Janky fails to teach the missing limitations of determining a valid movement. Examiner disagrees. Janky does teach determining a valid movement (see column 13 lines 16-24). Janky discloses a user defined area and time period and also discloses that the user can specify an action that is to be initiated by the processor if electric device enters or leaves one of the predefined zones

(see column 13 lines 16-24). Therefore, Janky teaches determining whether said detected user movement is a valid movement, wherein a valid movement occurs when the detected user movement is outside a predetermined user area for a predetermined amount of time (see column 13 lines 16-24 - note that these parameters can be user defined so the user can predetermine what would be a valid movement).

Applicant argues that there has to be some teaching suggestion or motivation to modify or combine the cited references. Applicant argues that the Examiner has failed to present a prima facie case of obviousness. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the teaching of valid movement associated with position/motion detection is the teaching taken from Janky and incorporated into the position/motion detection used for adjusting a display taught by Lee (see above rejection). Janky states that position reporting devices are frequently used to locate and report the position of a person or object (see column 1 lines 21-22) which is the motivation/suggestion to combine these references. The multiple display section adjustment taken from Janky and incorporated into the combination of Lee and Janky is taken only for the teaching of the multiple sections being adjusted separately and the motivation for this combination

is because this is a display device with adjusted movement based on user movement and to make a more user friendly device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Zubajlo whose telephone number is (571) 270-1551. The examiner can normally be reached on Monday-Friday, 8 am - 5 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amare Mengistu can be reached on (571) 272-7674. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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